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No. 99180-4

IN THE SUPREME COURT
STATE OF WASHINGTON

SPOKANE AIRPORT BOARD,
Petitioner,

v.

EXPERIMENTAL AIRCRAFT ASSOCIATION, CHAPTER 79,
Respondent.

AMICUS CURIAE BRIEF OF
WASHINGTON AIRPORT MANAGEMENT ASSOCIATION

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I. INTRODUCTION

As set forth by Petitioner Spokane Airport Board, the Court of Appeals has failed to follow governing Washington law and precedent regarding real estate lease enforcement. A real property lease memorializes the bargained-for terms of the parties' agreement. Reasonable reliance on the mutually agreed upon terms is fundamental to the lessee/lessor relationship. Likewise, when one party does not abide by the mutually agreed upon terms, the other party is entitled to utilize the available legal remedies to enforce those terms. The Washington legislature enacted the unlawful detainer process to provide an expedited and efficient method to determine possession and recovery rights. The appellate court's decision contradicts this intent and prejudices public airports' stewardship obligations. Rather than managing and developing the leased premises for the public's benefit, the public airport is forced to pursue the lengthy litigation remedy the unlawful detainer process was intended to replace.

When parties agree to an early lease cancellation provision, the landlord should be afforded the opportunity to use the statutory unlawful detainer process to enforce its right to possession. This is especially true when the landlord is a public use airport, and the leased premises is aeronautical property. Public use airports serve as stewards for the

management and development of aeronautical property in the manner that best serves the public and aviation industry. Blocking use of the expedited and efficient unlawful detainer process obstructs the public use airports' stewardship obligation.

II. IDENTITY AND INTEREST OF AMICUS

This case concerns the management of real property designated for aeronautical use and a public airport's exercise of contractual and statutory remedies. A public airport's stewardship obligations are carried out by airport managers, administrators, and operators. In this case, the City of Spokane and Spokane County, as joint sponsors of Spokane Airports, vested Petitioner Spokane Airport Board "with complete authority for the management and operation of the Airport for aeronautical and industrial development purposes." (CP 2).

WAMA's interest in this case stems from its mission and the outcome's consequences for its members – the managers, administrators, and operators responsible for executing public airports' stewardship obligation. WAMA is a Washington non-profit corporation and its mission, as set forth in its Constitution and Bylaws, is "[t]o improve Airports and Airport Management in Washington State." WAMA's members include persons responsible for the management, general superintendence, or

administration of a public or a privately owned public airport in the State of Washington, as well as individuals interested or involved in the establishment, development, operation, maintenance, or management of airports. According to WAMA's Articles of Incorporation, it exists for various purposes, including to promote "public understanding of the value of aviation and of an airport to the community it serves" and "the highest possible standards in airport operations necessary for public safety and service."

WAMA's goal is to support all airports in the State of Washington. Its members include individuals employed by Petitioner Spokane Airport Board as well as members and officers of various chapters of Experimental Aircraft Association in the state, though not Respondent Experimental Aircraft Association, Chapter 79.

WAMA seeks to assist the Court by identifying the stewardship and property management obligations of public airports in Washington and detailing how the appellate court's decision prejudices its members' stewardship and property management obligations. WAMA has a strong interest in ensuring public airports in Washington can manage their respective aeronautical property in a manner consistent with the airports' federal and state law obligations. By reducing RCW 59.12.030(1)'s scope

of application, the appellate court's decision prejudiced WAMA's members' rights, obligations, and ability to manage, operate, and develop aeronautical property.

III. APPLICANT'S FAMILIARITY WITH THE ISSUES

WAMA has reviewed the Parties' briefs, the Court of Appeals' decision, and legal issues enumerated below.

IV. APPLICANT'S REASON FOR BELIEVING ADDITIONAL ARGUMENT IS NECESSARY ON THESE SPECIFIC ISSUES.

WAMA files this amicus brief because the Court of Appeals' decision threatens the ability of public use airports in Washington to carry out their stewardship obligations to manage, operate and develop aeronautical property in the best interests of the public. WAMA believes additional argument is necessary to emphasize the extent of detrimental impact on non-parties and their ability to satisfy state and federal obligations.

WAMA joins the factual recitation submitted by Petitioner Spokane Airport Board and incorporates the same by this reference.

V. ISSUE TO BE ADDRESSED BY AMICUS

WAMA rephrases the question presented as follows:

Whether a steward of public airport property can use an unlawful detainer action, pursuant to RCW 59.12.030(1), to recover possession of airport real property following exercise of a mutually agreed upon early lease termination provision.

VI. ARGUMENT

The stewardship obligations to manage, operate, and develop aeronautical property in the best interests of the public are mandated by statute. Under the Revised Airports Act, Chapter 14.08 Revised Code of Washington, real property acquired to establish airports, and the maintenance and operation of such airports, are “declared to be public, governmental, county and municipal functions, exercised for a public purpose, and matters of public necessity.” RCW 14.08.020. As such, any “municipality” in Washington (i.e., county, city, town, airport district and port district) exercising its power and carrying out its obligations under the Revised Airports Act does so as a steward of public property to fulfill such public purpose and public necessity. *Id.* This Court recently recognized the applicability of Chapter 14.08 Revised Code of Washington to every public airport or other air navigation facility, regardless of whether owned and operated by a port district, city, and/or county. *See Filo Foods, LLC v. City*

of SeaTac, 183 Wn.2d 770, 788-89, 357 P.3d 1040 (2015). An early lease termination provision, agreed upon by all parties, allows management to act expediently to serve aeronautical purposes.

The Revised Airports Act acknowledges federal law’s dominant role in airport management and stewardship of aeronautical property. *See* RCW 14.08.340 (declaring the Revised Airports Act “shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of aeronautics.”); RCW 14.08.120(2) (requiring the management, government, and use of airport property to conform “with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and the rules and standards issued from time-to-time pursuant thereto.”); RCW 14.08.160(1) (authorizing airports to accept federal moneys and “to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon airports and other air navigation facilities.”); RCW 14.08.330 (stating “[e]very airport and other air navigation facility controlled and operated by any municipality, or jointly controlled and operated pursuant to the provision of this chapter, shall be subject to federal and state laws, rules, and regulations...”). As emphasized

in Chapter 14.08 RCW, the stewardship obligations of airports in Washington undoubtedly require compliance with applicable federal law.

Airport aeronautical property is subject to an overlay of federal regulation that significantly affects an airport's ability to lease such property. Consistent with RCW 14.08.160(1), the United States Department of Transportation, Federal Aviation Administration ("FAA"), exercises its regulatory authority over airport management and operations through obligations contained in federal grants and deeds. These obligations flow primarily from recipient commitments made in consideration for federal grant funding through the Airport Improvement Program (known as "Grant Assurances"). See https://www.faa.gov/airports/aip/grant_assurances/. The Grant Assurances implement the requirements set forth in the Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47101 *et seq.*, and other federal statutes. See *Spa Rental, LLC v. Somerset-Pulaski County Airport Board*, 884 F.3d 600, 602 (6th Cir. 2018). Grant Assurance 24 governs the leasing decisions of airport operators and managers, which "requires the airport sponsor to 'maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible.'" *Spa Rental, LLC*, 884 F.3d at 602 (citing FAA Order 5190.6B, app. A, at

11; 49 U.S.C. § 47107(a)(13)(A); *see* 78 Fed. Reg. at 55,332, 55,335.¹ The purpose of this stewardship obligation is to maintain the utility of the federal investment in the airport. FAA Order 5190.6B, *Airport Compliance Manual* (2009), at 17-2.

Specific to RCW 14.08.160's authorization to receive federal monies, Washington airports have accepted significant amounts of Airport Improvement Program grants over many years, largely for airport development and improvement purposes. Those grants are conditioned upon Grant Assurance compliance. Violations of any Grant Assurance can result in significant penalties to an airport, including withholding of new grant funds, withholding payments on existing grant funds, terminating eligibility for future funding, and civil penalties up to \$50,000 for each violation. 14 CFR Subpart C; 14 CFR Subpart E.

¹ FAA Order 5190.6B, *Airport Compliance Manual* (2009), contains comprehensive guidance on the FAA's interpretation of all 39 Grant Assurances. Important guidance is also contained in the FAA *Policy Regarding Airport Rates and Charges* (78 Fed. Reg. 55,330 (September 10, 2013)), which applies to all aeronautical uses of the airport. 78 Fed. Reg. at 55,331. Aeronautical use is defined as "any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of aircraft," which necessarily includes use of airport property for an aircraft hangar. 78 Fed. Reg. at 55,331-32.

With this backdrop, it is clear the Court of Appeals decision creates a Gordian knot for airport operators and managers in terms of satisfying their property stewardship obligations. Aeronautical property is a rare asset that state and federal law recognize must be used in a manner to derive revenue for the sustenance of the airport. An early lease termination provisions promotes the airport's compliance when it identifies increased benefit from an alternative aeronautical use of airport property. However, that mutually agreed upon term has minimal value if the courts eliminate access to an expedient enforcement process.

When a tenant fails or refuses to abide by the terms of a mutually agreed upon lease of aeronautical property, the airport must be able to enforce the terms of the lease. Washington's expedited statutory process, RCW 59.12.030(1), which permits a landlord to recover possession when the tenant holds over after the lease termination, is essential for public airports. Stripping away this statutory process hinders the airport operator from meeting state and local obligations. The ability to exercise lease terms is fundamental to fulfilling the FAA's self-sustainability expectation. The Court of Appeals decision relegates the airport operator to an ejectment action, resulting in delay in reletting the aeronautical property and litigation expense. This contradicts the airport's stewardship obligations of public

purpose and necessity under Chapter 14.08 RCW and renders the mutually agreed upon early lease termination provision moot.

VII. CONCLUSION

For the reasons set forth herein, we respectfully provide this Amicus Curiae Brief of the Washington Airport Management Association.

RESPECTFULLY SUBMITTED this 5th day of April, 2021.

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